

i. IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Allen Carl. et al.	EXAMINER:	David C. Comstock
U.S.S.N.:	10/601,014	GROUP:	3733
FILED:	June 20, 2003	Conf. No.	7152
FOR:	SYSTEMS, METHODS, DEVICES AND DEVICE KITS FOR FIXATION OF BONES AND SPINAL VERTEBRAE (AS-AMENDED)		

Assistant Commissioner for Patents  
Washington, D.C. 20231

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) on March 18, 2011.

/ William J. Daley, Jr. /  
By: \_\_\_\_\_  
William J. Daley, Jr. (Reg. No. 35,487)

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**PETITION TO WITHDRAW HOLDING OF ABANDONMENT; 37 C.F.R. §1.181**

Sir:

This is a Petition under 35 C.F.R §1.181 for withdrawal of the holding of abandonment as to the United States in the above captioned matter on the grounds or basis that a Notice of Appeal was timely filed by Applicants.

**STATEMENT OF FACTS**

1. In Response to the Office Action that had been mailed August 17, 2010, Applicants timely e-filed a Response on February 17, 2011 including a request for the three month extension of time and authorization to charge the deposit account of Edwards Angell Palmer & Dodge for the required fee. In addition, Applicants also e-filed at the same time a Notice of Appeal and with authorization also to charge the deposit account for the required fee. The Response and the

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Notice of Appeal were e- filed by the undersigned and a copy of same is found in the Image File Wrapper for the subject application.

2. Subsequently, an Advisory Action (mailed February 28, 2011) was received on or about March 4, 2011. The Advisory Action indicated that the proposed amendments to the claims raised new issues that would require further search and consideration.

3. The undersigned called the Examiner to arrange a telephone interview to discuss the Advisory Action. On March 14, 2011, the Examiner called back and advised the undersigned that a Notice of Abandonment was in the process of being mailed to Applicants and that he was going to try and stop it from being mailed. It appears that the Examiner was unaware, as of when the paper work resulting in the mailing of a Notice of Abandonment was prepared, that Applicants had timely filed a Notice of Appeal along with the after final Response.

4. The undersigned was contacted by the Examiner on March 15, 2011 and was told that the Notice of Abandonment had been mailed (was mailed March 15, 2011). Thus, Applicants were told that they would have to file a Petition to Withdraw the Holding of Abandonment on the basis that a Notice of Appeal had been timely filed.

5. During this discussion, the Examiner also suggested that Applicants file a Supplemental Response including Applicants' remarks that were made during the call as well as submitting a terminal disclaimer. Thus, the requested Supplemental Response and Terminal Disclaimer accompany the within Petition. The Examiner made this request so as to advance prosecution after the holding of abandonment is withdrawn.

6. This petition and any related enclosures are being filed within two (2) months of the undersigned becoming aware of the Notice of Abandonment. Accordingly, this petition is considered to be timely filed [37 C.F.R. §1.181(f)].

### **ARGUMENT**

Notwithstanding the basis upon which the Notice of Abandonment was mailed (*i.e.*, No response filed by Applicant); Applicants did timely file a Response and a Notice of Appeal. Thus, the application was and remained pending because of the timely filing of a Notice of Appeal.

Applicants based on the above and in the Statement of Facts, submit that the basis upon which the Notice of Abandonment was issued, namely that a proper Response not timely filed, is incorrect.

In sum, Applicants timely filed a Notice of Appeal. Therefore, Applicants request that the abandonment of the application be withdrawn and that prosecution be re-opened for the subject application. Applicants further request that the Supplemental Response and terminal disclaimer be entered into the record.

### **RELIEF REQUESTED**

Applicants respectfully request the Commissioner, or his designee, based on the foregoing representations and arguments/observations, to withdraw the holding of abandonment and to re-open prosecution and enter the Supplemental Response and terminal disclaimer accompanying this Petition.

### **REQUIRED FEE**

There is no fee required for the submission of a Petition under Rule §1.181. However, if for any reason a fee is required for consideration of the within Petition, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. **04-1105**.

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### **ADDITIONAL INFORMATION**

If the USPTO requires any further information or requires any further clarification regarding the above, then Applicants respectfully request that the undersigned be contacted at the below listed number.

Respectfully submitted,  
Edwards Angell Palmer & Dodge, LLP

/ William J. Daley, Jr. /

Date: March 18, 2011

By: \_\_\_\_\_

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